John L. Smaha, Bar No. 95855
Robert L. Kracht, Bar No. 183236
SMAHA LAW GROUP
7860 Mission Center Court, Suite 100
San Diego, California 92108
Telephone: (619) 688-1557
Facsimile: (619) 688-1558

Attorneys for Defendant PARADISE CREEK HOLDING CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES Plaintiff, v. LOU ARIAS dba LOU'S AUTOMOTIVE REPAIR; PARADISE CREEK HOLDING CORPORATION., and Does 1-10. Defendants.	CASE NO. 08CV0657 DMS AJB **ANSWER TO CIVIL COMPLAINT** Complaint filed: April 10, 2008 Trial Date: Not yet set.

Defendant PARADISE CREEK HOLDING CORPORATION ("Defendant") answers the Complaint of Plaintiff KAREL SPIKES ("Plaintiff") as follows:

1. Defendant states that paragraph 1 is not an allegation, and is therefore neither admitted nor denied. To the extent the same is construed as an allegation, it is denied.

2. Defendant states that paragraph 2 is not an allegation, and is therefore neither admitted nor denied. To the extent the same is construed as an allegation, it is denied.

3. Defendant states that paragraph 3 is not an allegation, and is therefore neither admitted nor denied. To the extent the same is construed as an allegation, it is

denied..

4. Defendant denies the allegations of paragraph 4 because it lacks sufficient information or belief as to the same.

5. Defendant admits the factual allegations of the first sentence of paragraph 5.

6. Defendant states that paragraph 6 is not an allegation, and is therefore neither admitted nor denied. To the extent the same is construed as an allegation, it is denied.

7. Defendant denies the allegations of paragraph 7 because it lacks sufficient information or belief as to the same.

8. Defendant denies the allegations of paragraph 8.

9. Defendant denies the allegations of paragraph 9 because it lacks sufficient information or belief as to the same.

10. Defendant denies the allegations of paragraph 10 because it lacks sufficient information or belief as to the same.

11. Defendant denies the factual allegations of the first sentence of paragraph 11 because it lacks sufficient information or belief as to the same. As to the remainder, Defendant states that it/they is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegations, it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

12. Defendant states that the first sentence of paragraph 12 is not an allegation, and is therefore neither admitted nor denied. The remaining allegations of paragraph 12 are denied because Defendant lacks sufficient information or belief as to the same.

13. Defendant states that paragraph 13 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

14. Defendant states that paragraph 14 is/are not (an) allegation(s), and is/are

therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

15. Defendant states that paragraph 15 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

16. Defendant states that paragraph 16 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

17. Defendant denies the allegations of the first sentence of paragraph 17 because it lacks sufficient information or belief as to the same. Defendant states that the second sentence of paragraph 17 is not an allegation, and is therefore neither admitted nor denied. To the extent the same is construed as an allegation, it is denied because Defendant lacks sufficient information or belief as to the same.

18. Defendant states that paragraph 18 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

19. Defendant states that paragraph 19 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

20. Defendant states that paragraph 20 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

21. Defendant states that paragraph 21 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

22. Defendant states that paragraph 22 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

23. Defendant states that paragraph 23 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

24. Defendant states that paragraph 24 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

25. Defendant states that paragraph 25 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

26. Defendant states that paragraph 26 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

27. Defendant states that paragraph 27 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

28. Defendant states that paragraph 28 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

29. Defendant states that paragraph 29 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

30. Defendant states that paragraph 30 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

31. Defendant states that paragraph 31 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

32. Defendant states that paragraph 32 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same..

33. Defendant states that paragraph 33 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

34. Defendant states that paragraph 34 is/are not (an) allegation(s), and is/are therefore neither admitted nor denied. To the extent the same is/are construed as (an) allegation(s), it/they is/are denied because Defendant lacks sufficient information or belief as to the same.

AFFIRMATIVE DEFENSES

As separate, distinct and affirmative defenses to the Complaint on file herein, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

As a first, separate and distinct affirmative defense, Defendant is informed and believe and based thereon alleges that the Complaint and each and every cause of action herein fails to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

As a second, separate and distinct affirmative defense to the Complaint, Defendant is informed and believe and based thereon alleges that Plaintiffs are estopped to plead each and every cause of action in said Complaint by virtue of its own conduct.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

As a third, separate and distinct affirmative defense to the Complaint, Defendant is informed and believe and based thereon alleges that Plaintiff has waived its right to file this Complaint because Plaintiff has engaged in conduct or activities that approve, authorize, acquiesce in, anticipate and/or ratify that alleged conduct of Defendant with respect to the subject matter of this litigation as alleged in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

(Excuse)

As a fourth, separate and distinct affirmative defense, Defendant is informed and believe and based thereon alleges that if any obligation or agreement, as alleged in the Complaint, has been entered into, any duties or performances of the Defendant are excused by reason of failure of consideration, impossibility of performance, prevention by Plaintiff, frustration of purpose and/or acceptance by Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

As a fifth, separate and distinct affirmative defense, Defendant is informed and believe and based thereon alleges that each cause of action, jointly and/or separately, in the Complaint is barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Standing)

As a sixth separate and distinct affirmative defense to the Complaint, Defendant is informed and believes and based thereon alleges that Plaintiffs lack standing to bring all and/or part of the claims alleged in the Complaint

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

As a seventh, separate and distinct affirmative defense, Defendant is informed and believe and based thereon alleges that the Complaint, and each alleged cause of action therein, is barred by reason of the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

(Frivolous Complaint/Noncompliance with FRCP 11)

As a seventh, separate and distinct affirmative defense, Defendant is informed and believe and based thereon alleges that the Complaint, and each alleged cause of action therein, fails to comply with Federal Rule of Civil Proecedure 11, and as such, Defendant is entitled to all remedies available thereunder.

NINTH AFFIRMATIVE DEFENSE

(Comparative Fault)

As an ninth, separate and distinct affirmative defense to the Complaint, Defendant is informed and believe and based thereon alleges that Plaintiff's damages, if any, were proximately caused or contributed to by the acts and/or omissions or negligence of other persons, entities, or parties, and damages awarded against this answering Defendant, if any, should be apportioned according to the respective fault of the persons, entities or parties who contributed to or caused Plaintiff's injuries, if any.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

As a tenth, separate and distinct affirmative defense to the Complaint, Defendant is informed and believe and based thereon alleges that the Complaint is barred, or alleged breach excusable, by the failure of each and every other party, including Plaintiff, other Defendant, or unknown/unnamed parties, to take reasonable steps to mitigate alleged present or prospective damages.

ELEVENTH AFFIRMATIVE DEFENSE

(Readily Achievable Repairs)

As an eleventh and separate affirmative defense, Defendant is informed and believes and thereon alleges that those readily achievable repairs needed to remove any alleged barriers to access have been made or are in the process of being made. Alternatively, on information and belief, the repairs sought by Plaintiff are not readily achievable.

TWELFTH AFFIRMATIVE DEFENSE

(Temporary Barriers Nonactionable)

As an twelfth and separate affirmative defense, Defendant is informed and believes and thereon alleges that to the extent there are any alleged barriers to access, the same are temporary barriers, not architectural barriers, and as such are nonactionable. Defendant is currently in the process of getting approval from the appropriate governmental authorities for building on the entire property owned by Defendant; the at-issue property will be demolished as soon as is reasonably practical after final approval.

THIRTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

As a thirteenth separate and distinct affirmative defense, Defendant is informed and believe and based thereon alleges that Defendant has insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event that discovery indicates that same would be appropriate.

WHEREFORE, Defendant PARADISE CREEK HOLDING CORPORATION prays for judgment in his favor and against Plaintiff KAREL SPIKES, as follows:

1. That Plaintiff take nothing by way of its Complaint and that the same be dismissed as against Defendant;
2. For reasonable attorneys' fees incurred herein;
3. For costs of suit herein; and
4. For such other and further relief as this Court deems just and proper.

Dated: May 22, 2008

/s/ John L. Smaha

John L. Smaha
SMAHA LAW GROUP
Attorneys for Defendant PARADISE CREEK HOLDING CORPORATION

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John L. Smaha, Esq. Bar No. 95855
Robert L. Kracht, Bar No. 183236
SMAHA LAW GROUP APC
7860 Mission Center Ct., Ste. 100
San Diego, California 92108
(619) 688-1557 Telephone
(619) 688-1558 Facsimile

Attorneys for Defendant PARADISE CREEK HOLDING CORPORATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DECLARATION OF SERVICE Case No. 08 CV 0657 DMS AJB
Spikes v. Arias, et al.

I am employed in the City of San Diego, California. I am over the age of 18 and not a party to the within action. My business address is 7860 Mission Center Court, Suite 100, San Diego, California 92108.

On May 22, 2008, I caused to be served the following document(s) described as:

1. ANSWER TO CIVIL COMPLAINT

in this action by placing the true copies thereof enclosed in a sealed envelope addressed as follows:

Amy B. Vandeveld, Esq.
Law Offices of Amy B. Vandeveld
1850 Fifth Avenue
San Diego, CA 92101
(619) 231-8883

[X] (**BY MAIL**) I served the individual named by placing the documents in a sealed envelope. I then placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practice.

[ ] (**BY E-MAIL**). I caused such document(s) to be served on all parties to this action via-email at the e-mail addresses indicated above and/or on the attached service list; and no delivery error was reported by the firm's e-mail account. I caused the computer to print a transmission record of the transmission.

[ ] (**BY FAX**) At _____, I transmitted the above-described document by facsimile machine to the above listed number. The transmission originated from facsimile phone number (619) 688-1558 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto. [CCP Section 1013(e); CRC Rule 2008].

[ ] (**BY OVERNIGHT DELIVERY**) I caused the envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s). [CCP Section 1013].

[ ] (**BY PERSONAL SERVICE**) I served the individual named by personally delivering the copies to the offices of the addressee via Diversified Legal Services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 22, 2008**, San Diego, California.

Amelda M. Johnson